

September 17, 2014

William M. Wright  
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2828 Easy Street, Suite 3  
Placerville, CA 95667

Re: Your Request for Advice  
**Our File No. A-14-163**

Dear Mr. Wright:

This letter responds to your request for advice on behalf of Placer County Local Agency Formation Commission Commissioner Brian Sheehan regarding his duties under the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup> Because the Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), this advice is based solely on the facts presented.

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Government Code section 1090.

### QUESTION

Does Commissioner Sheehan have a conflict of interest in a Placer County Local Agency Formation Commission (“LAFCO”) incorporation decision based on his life estate interest in real property located in the area subject to the incorporation proposal?

### CONCLUSION

Based on the limited nature of the Commissioner’s property interest, and the fact that it is a non-transferrable interest, he does not have a conflict of interest due to his interest in the real property at issue. The decision will not financially affect the value of his property interest.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## FACTS

Brian Sheehan is an elected director of the Squaw Valley Public Service District (“SVPSD”). He has also been appointed to serve as the alternate independent special district representative on the Placer County LAFCO pursuant to Government Code Sections 56325 and 56332.

On August 20, 2013, a Petition for the Incorporation of the Town of Olympic Valley was filed with LAFCO and on September 12, 2013, LAFCO issued its Certificate of Sufficiency for the petition. The proposed boundaries of the new Town of Olympic Valley would mirror the existing boundaries of the SVPSD.

Mr. Sheehan resides within the area proposed to be incorporated as the town of Olympic Valley. His Olympic Valley residence is his primary domicile for SVPSD residency requirements and for voting purposes. Mr. Sheehan formerly owned his residence in Olympic Valley, but sold the property to his adult son in February 2013. He transferred title to his son, and retained a nontransferrable life estate for the upstairs of the residence, which he owns outright and for which he makes no payments.<sup>2</sup> Although he documented that right in emails between himself and his son, he does not believe it was recorded in the Placer County Records.

## ANALYSIS

The Act’s conflict-of-interest provisions ensure that public officials will “perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001(b).) Section 87100 provides:

“No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.”

The Commission has adopted an eight-step standard analysis for deciding whether an official has a “financial interest” in a decision. (Regulation 18700(b).)

***Steps 1 and 2. Is Commissioner Sheehan a “public official” and will the Commissioner be making, participating in making or influencing a governmental decision?***

As an elected director of the SVPSD and a member of the Placer County LAFCO, Commissioner Sheehan is a public official. The Commissioner is asking whether he may make and participate in making decisions related to the proposed incorporation of the town of Olympic Valley.

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<sup>2</sup> Additional facts provided on September 10, 2014.

***Step 3. What are Commissioner Sheehan interests that may be affected by the decision?***

The Act's conflict-of-interest provisions apply only to conflicts of interest arising from certain interests described in Section 87103 and Regulations 18703-18703.5. The interest at issue in your request for advice is the home in which the Commissioner resides. Section 87103(b) provides that an official has an interest in real property in which he or she has a direct or indirect interest of \$2,000 or more. (Section 87103(b); Regulation 18703.2.)

Section 82033 defines "interest in real property" to include any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family if the fair market value of the interest is \$2,000 or more. Interests in real property of an individual include a pro rata share of interests in real property of any business entity or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10-percent interest or greater.

The term "beneficial interest," as used in Section 82033, is not defined in the Act. However, the concept has been addressed in advice letters.

"For purposes of the Act, a public official can have a beneficial interest in real property giving rise to potential conflicts of interest even when legal title to the property is vested in a non-profit mutual benefit club. This is clearly recognized by Section 82033, which expressly includes both 'beneficial' and 'ownership' interests, and is consistent with the common legal understanding of the term 'beneficial interest,' succinctly summarized in Black's Law Dictionary: 'Beneficial Interest. Profit, benefit, or advantage resulting from a contract, or the ownership of an estate as distinct from the legal ownership or control.'" (Doering Advice Letter, No. A-12-068.)

While we do not opine on whether the Commissioner's interest is considered a real property interest in other contexts, it appears that pursuant to your facts, this could indeed be a "beneficial interest" in real property. You stated that Mr. Sheehan had an agreement with his son, in connection with his sale of his home to his son, that he retained a life estate for use of the upstairs of the residence. The house is located in the area proposed to be incorporated as the town of Olympic Valley. We assume for purposes of this analysis that the interest would be a beneficial interest in real property.<sup>3</sup>

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<sup>3</sup> Section 81003 states that the Act "should be liberally construed to accomplish its purposes." (Section 81002(c).)

***Steps 5 and 6:<sup>4</sup> Materiality and Foreseeability.***

Regulation 18705.2(a)(2) provides that the reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has an interest is material whenever the governmental decision results in the inclusion in or exclusion from any city, county, district, or other local government subdivision, or other boundaries. The decision to incorporate Olympic Valley (including the property in which the official has an interest) as a new city and removing it from the County's jurisdiction may reasonably foreseeably materially affect the official's property interest.

However, based upon the limited nature of the real property interest and the facts you have provided, it would not appear that there will be any financial effect on your property that will result from the decision. The fact that the official retains a life estate in the upstairs of the property, which cannot be sold, means that any changes to the area will not financially affect the value of his real property interest. Regulation 18705(c) provides:

“Notwithstanding 2 Cal. Code Regs. sections 18705.1 through 18705.5, inclusive, an official does not have to disqualify himself or herself from a governmental decision if: Although a conflict of interest would otherwise exist under 2 Cal. Code Regs. Sections 18705.1 through 18705.5, inclusive, and 18706, *the decision will have no financial effect on the person or business entity who appears before the official, or on the real property in which the official holds a direct or indirect interest, or on the personal finances of the official and/or his immediate family.*” [Emphasis added.]

Consequently, since there will be no financial effect on the Commissioner's life estate interest, he does not have a conflict of interest under the Act.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: John W. Wallace  
Assistant General Counsel  
Legal Division

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<sup>4</sup> The Commission is currently in the process of revising regulations implementing the conflict-of-interest provisions of the Act. As part of this revision, the “directly involved/indirectly involved” test in current Step Four has been eliminated for economic interests in real property with surviving elements of the test merged into the materiality test in current Step Five. (See Staff Memorandum to the Commission, Determining the Material Financial Effect of a Decision on a Real Property Interest, dated April 7, 2014.)